IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8067 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANGAL VIKAS CO-OPERATIVE HOUSING SOCIETY LIMITED

Versus

DEPUTY SECRETARY (APPEALS)

Appearance:

1. Special Civil Application No. 8067 of 2001

MR AJ YAGNIK for Petitioner No. 1

Ms MANISHA LAVKUMAR, AGP, for Respondent No. 1-3

MR MUKESH PATEL for Respondent No. 4-5

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 17/12/2002

ORAL JUDGEMENT

Rule.

Ms Manisha Lavkumar learned AGP waives service of Rule for respondents No.1 to 3 and Mr Mukesh Patel waives service of Rule for respondents No.4 and 5. In the facts and circumstances of the case, the petition is taken up for final disposal today.

2. The controversy in the present petition is about implementation of the Resolution dated 29-9-1996 passed by the Mangal Vikas Cooperative Housing Society at Danilimda in Ahmedabad. The petitioner- Society is desirous of proceeding further to implement the said resolution but the respondent- authorities i.e. the District Registrar of Cooperative Societies, Ahmedabad city, Additional Registrar of Cooperative Societies, Gujarat State and the State Government in the Cooperation Department have passed orders requiring the petitioner-Society to convene meeting of the General Body to consider whether any amount should be recovered from any of the members before holding elections to the managing committee of the petitioner- Society.

3. Mr Yagnik learned counsel for the petitioner Society submits that the Society had initially allotted each member land admeasuring 100 sq.yds. along with construction on a part of the said land and all the members were charged price uniformly. However, since additional land was available adjoining most of the plots, the Society had allowed members to take additional land abutting their plots at different rates ranging from Rs.200/- to Rs.500/- depending on the location of the land and accordingly, the Society had passed the Resolution on 20-9-1996. It is stated that out of the 47 members of the Society, 5 members did not take additional land and, therefore, they were not required to pay any amount. Out of the remaining 42 members, 22 members have already paid the price for the additional land in accordance with the said Resolution dated 29-9-1996 but 20 members have not paid and, therefore, they are treated as defaulters. The Society, therefore, decided that when elections are to be held, those defaulters will not be permitted to vote nor will they be permitted to contest in the elections. The members who were aggrieved by the said stand of the Society approached the District Registrar of Cooperative Societies who passed the impugned order dated 3-7-2001 directing the petitioner Society to convene the General Body meeting to consider the issue of price to be charged for the additional land and thereafter to hold elections. The petitioner Society challenged the same by filing Revision Application No.80 of 2001 before the Additional Registrar of Cooperative Societies (Appeals) who dismissed the revision by order

dated 20-8-2001. The petitioner Society carried the matter in further revision before the State Government who has also dismissed the same by the impugned order dated 13-9-2001. Hence the present petition.

Mr Yagnik has submitted that the impugned orders are passed because respondent No.2, the then Minister is related to two of the defaulters- Mr Motilal I Solanki and Mr Hiralal I Solanki.

4. Mr Mukesh A Patel learned counsel for the newly added respondents No.4 and 5 has submitted that the said respondents and many other members are not required to pay any amount to the Society and hence they cannot be considered to be defaulters. It is their case that each member was initially allotted 200 sq.yds. of land (with construction on a part thereof). It is also submitted that the entire question whether any price is to be recovered should be reconsidered by the General Body of the Society and, therefore, unless and until the General Body reconsiders the entire matter, respondents No.4 and 5 and other parties may not be considered to be defaulters and they have to be permitted to participate in the elections without any disqualification.

5. Ms Manisha Lavkumar, learned AGP appearing for respondents No.1 and 3 states that the elections are already overdue as the present managing committee has already completed its tenure and, therefore, the provisions of Section 74 D are liable to be invoked.

As regards the allegation of malafides, the learned AGP has submitted that the allegation of malafides are denied in the reply filed by the respondents.

6. Having heard the learned counsel for the parties, it appears to the Court that since the elections to the managing committee of the petitioner- Society are already overdue for more than six months, there is full justification on the part of the respondent- authorities invoking the provisions of Section 74D of the Act and appointing a Custodian. Accordingly, this shall be done within two weeks from the date of receipt of the writ of this Court.

7. As regards the dispute about implementation of the Resolution dated 29-9-1996, when as many as 22 members have already paid the money for the additional land as per the aforesaid resolution dated 29-9-1996, there is no reason why Resolution dated 29-9-1996 should

not be implemented.

8. As regards the allegation of malafides, the Court does not propose to go into the allegations of malafides as even otherwise the petition deserves to be allowed for the reasons recorded.

9. However, there are two disputes. One is, what is the area of land originally allotted to the members of the Society. According to the petitioner, the Society had allotted 100 sq.yds. of land along with construction thereon and, therefore, for any land in excess thereof, the members shall have to to pay the amount at the rates specified in Resolution dated 29-9-1996. On the other hand, Mr Mukesh Patel states that the Society had allotted 200 sq.yds. of land along with construction thereon and, therefore for the land in excess of 200 sq.yds. the Society can demand any amount provided the member has taken such additional land in excess of 200 sq.yds..

10. In view of the above factual controversy, the following directions are issued:-

(i) The respondent- authorities shall appoint a Custodian for the petitioner- Society within two weeks from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier;

(ii) The Custodian shall proceed to implement Resolution No.5 dated 29-9-1996 after ascertaining the following facts:-

(a) What was the area of the land allotted to each member at the time of initial allotment;

(b) For any additional land in excess of such originally allotted land, the Custodian shall fix the price in accordance with the rates stipulated in the Resolution dated 29-9-1996 and serve a notice on each member wherever there is any outstanding liability on the basis of the Resolution dated 29-9-1996;

(iii) After ascertaining the said liabilities within two months from the date of his appointment, the Custodian shall convene a General Body meeting of the Society at which the members will be required

to consider the question of charging interest to be paid by the concerned members to the Society for the period from 1-10-1996 till the date of payment and the time to be given to the members for paying the outstanding principal amount as well as the amount of interest;

(iv) After the aforesaid exercise is undertaken, the Custodian shall prepare a register of members showing the principal amount outstanding, if any, along with the interest, if any, and convene a meeting for holding elections to the managing committee of the Society. For this purpose, the members who are found to be in default, shall not be permitted to participate in the elections either for the purpose of voting or contesting the elections. This direction is required to be given in view of the provisions of Sections 27 and 28 of the Gujarat Cooperative Societies Act, 1961 read with Rule 32 (1)(c) and Bye-law No.16(2) of the Bye-laws of the petitioner-Society.

11. The petition is accordingly disposed of in terms of the aforesaid directions.
Rule is made absolute to the aforesaid extent with no order as to costs.

12. At this stage, Mr Mukesh Patel for respondents No.4 and 5 prays for stay of operation of this order in order to have further recourse in accordance with law. Mr Patel is confining this prayer with regard to the directions for recovery and exclusion from elections.

13. The directions given by the Court for recovery and exclusion from elections are to operate after two months during which period the Custodian will be appointed and will be carrying out the exploratory exercise whether any member has taken any additional land over and above the land allotted initially by the Society. Hence there is no warrant for granting any stay of this order.

(M.S. Shah,J)
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